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Texas Department of Health

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FILE

Mr. Richard A. Pearce, P.E.
Law Engineering Testing Company
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REORGANIZED

Subject: Solid Waste - Travis County
Lincoln Property File - 100 Congress Avenue, Austin, Texas

Dear Mr. Pearce:

TKD 981 155 971

This letter is in response to your letter dated September 8, 1987, requesting the Department's assistance in verifying the current status of certain environmental matters related to the property located in the 100 block of Congress Avenue, west side. It also responds to your request for written confirmation of the Department's position. Our responses are based on current law and regulations. A change in either could alter our position and regulatory authority.

The Texas Department of Health's (TDH) authority with respect to water quality is limited to regulatory control over water to be used as public drinking water. The Texas Water Commission (TWC) is charged with the protection of "water in the state" and is the agency with responsibility for regulating point discharge permits, monitoring surface water quality and protecting ground water from contamination. TDH is responsible for the regulation of nonhazardous municipal solid waste. In this area the primary thrust of the Department's activities is the regulation of municipal landfills, transfer stations, waste incinerators, and sludge disposal sites. TWC has responsibility for the regulation of industrial and hazardous solid waste and is the lead agency for emergency and spill response activities.

Your letter dated September 8, 1987, posed eight questions to the Department. Our position on these questions was discussed in a meeting held, at your request, in the Department's headquarters in Austin on October 1, 1987. The meeting was attended by eight persons representing Lincoln Property Company and Metropolitan Life Insurance Company and by L. E. Mohrmann, Ph.D., C.P.C., of the TDH Division of Solid Waste Management. Since some questions involve the same subject, a single response has been provided for those questions where appropriate.

Question A-1 After complete implementation of a closure plan for the Phase II site which has been approved by the appropriate regulatory agency, what responsibility to your agency would any owner of the Phase II site have concerning contaminated groundwater which moves onto the Phase II site?

TDH Response: The question must be addressed to the Texas Water Commission because, as stated above, TWC has the lead responsibility to protect the "water in the state".

Question A-2 After the complete implementation of a closure plan for the Phase II site, what responsibility to your agency would any owner of the Phase II site have concerning contaminated soil on adjacent property, including possible contaminated soil under Second Street?

Question A-3 Would a party which becomes an owner in the Phase II site after complete implementation of an approved closure plan for the Phase II site have any responsibility to your agency for contamination which may have leached or migrated, totally or partially, from the Phase II site to off-site locations?

TDH Response: TDH would look to the current owner of any property found to be contaminated. The "ownership" of and responsibility for contamination on the land beneath a city street is a legal question to which the Department can not respond at this time.

Question B-1 Is your agency the proper regulatory agency to approve and/or monitor the implementation of a detailed closure plan for the Phase II site?

TDH Response: The responsible agency for the solid waste aspects of the 100 Congress Avenue Project site clean-up is the Texas Department of Health by mutual agreement of the Department and the Texas Water Commission. This decision was reached in a meeting held at the S. F. Austin Building on September 26, 1986, with representatives of Lincoln Property Company in attendance. The closure plan submitted by Lincoln Property Company was reviewed by TWC representatives prior to approval by TDH. Any modifications to the currently approved plan would be subject to review by both agencies with final approval of solid waste activities by TDH. Should control of contaminated groundwater become a factor in the closure or post-closure activities, then TWC would be the lead agency for those aspects of the activities.

Question B-2 Based upon the data presented with this letter does your agency regard the Phase II site as being regulated under the provisions of CERCLA?

TDH Response: This question must be addressed to EPA because the State of Texas has no authorization to decide CERCLA matters. If the State of Texas receives authority to conduct the CERCLA program, TWC would probably be the lead agency.

Question B-3 In any detailed closure plan for the Phase II site, how must the existence of contaminated groundwater on the Phase II site be addressed?

Question B-4 In any detailed closure plan for the Phase II site, must the issue of contaminated off-site groundwater moving onto the Phase II site be addressed?

TDH Response: Contaminated groundwater would be subject to the requirements of the Texas Water Commission. Discharge of any contaminated groundwater would involve TWC and The City of Austin.

Question B-5 Would the detailed closure plan for the Phase II site be required to deal with contaminated soil on or under property adjacent to the Phase II site?

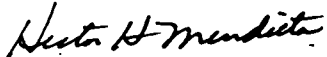
TDH Response: TDH would look to the current owner of any property found to be contaminated.

Although the questions cited above were discussed in the October 1, 1987, meeting, other points were also discussed. The TDH approval of the closure plan submitted was based on the concept of removal at some point in time of all contaminated soil located within the boundaries of the 100 block (west side) of Congress Avenue. If the projected construction plans are withdrawn, then a new closure plan must be submitted unless the contaminated soil on site is removed. The question of possible recontamination of the cleaned building site by contaminated groundwater entering off site has not been considered previously. At present, the Department would have to consider the owner of the property to be responsible for contamination on his/her property.

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Law Engineering Testing Company
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If you have any questions concerning this letter or if we may be of any assistance to you regarding solid waste management, you may contact Doctor Mohrmann here in Austin at telephone number (512) 458-7271.

Sincerely yours,



Hector H. Mendieta, P.E., Director
Division of Solid Waste Management

LEM:gsr

cc: Region 1, TDH
Mr. Kevin A. Fleming, Lincoln Property Company
Mr. Gregory D. Bonifield, Metropolitan Life Insurance Company
Mr. Stephen O. Drenner, Jenkins & Gilchrist
Mr. Ernest E. Specks, Johnson, Bromberg & Leeds
Water Quality Division, Texas Water Commission
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